THE HON'BLE SRI JUSTICE B.PRAKASH RAO

AND

THE HON'BLE Dr. JUSTICE G.YETHIRAJULU

W.A.No.1698 of 2005

and

C.A. (sr) No.4752 of 2005

COMMON JUDGMENT: (Per the Hon'ble Dr.Justice G.Yethirajulu)

The appellant in these appeals and seven others filed W.P.No.20331 of 2004 in this Court seeking to declare the transfer of Express Publications (Madurai) Limited represented by respondents 4 and 5 to Vasavi Communications Limited represented by respondent No.7 as vitiated by fraud and illegal and to issue a consequential direction to treat all the employees transferred to respondent No.7 as the employees of respondents 4 and 5 with all consequential benefits.

2. The petitioners alleged that respondents 4 and 5 adopted unfair labour practice against them and other workmen and resorted to fraudulent transfer of the Express Publications (Madurai) Limited represented by respondents 4 and 5 to Vasavi Communications Limited represented by respondent No.7 to evade their statutory duties and obligations towards workmen and with a view to misappropriate the provident fund and wage arrears of all the workmen as fixed by the wage board and other benefits of the workmen. Though the respondents 1 to 3 are required to take appropriate steps to curb the activities of illegality and victimization of respondents 4 to 7, they did not take any action to set right the situation in the public interest when the respondents 6 and 7 refused to take the petitioners and 17 others to duty since 12-03-2004 on the pretext of tripartite agreement between the petitioners and respondents. The petitioners further contended that the above acts of respondents 4 to 7 amount to violation of the right to life guaranteed to the petitioners under Article 21 of the Constitution of India. Therefore, they are entitled to the reliefs as prayed for.

3. Along with the writ petition, the appellant and other workmen filed W.P.M.P.No.26619 of 2004 seeking direction to respondents 6 and 7 to take the petitioners to duty by paying arrears of wages as per the existing pay scales pending disposal of the writ petition. The learned single Judge through the order dated 20-

12-2004 gave the following interim direction:-

> "Though this matter under went more than one adjournments, no counter affidavit is filed. In view of the same, interim direction as prayed for. Notice."

4. The respondents filed W.V.M.P.No.51 of 2005 to vacate the order in W.P.M.P.No.26619 of 2004, dated 20-12-2004, along with their detailed counters. The learned single Judge, after considering the contentions of both parties, allowed the vacate stay petition through the order dated 24-06-2004 by vacating the interim order dated 20-12-2004. The appellant, being aggrieved by the order of the learned single Judge in W.V.M.P. No.51 of 2005, preferred W.A.No.1698 of 2005.

5. The learned single Judge, in the impugned order, mentioned that all the contentions raised by the counsel for the petitioner and respondents have to be decided in the writ petition and not at the interlocutory stage. He further observed that since the petitioners are challenging the transfer of Andhra Prabha Publication of respondents 4 and 5 to respondent No.7 as vitiated by fraud, illegality, abinitio void and consequential direction to treat the petitioners as employees of respondents
4 and 5, the petitioners are entitled to the reliefs if their contentions are accepted as true and correct. In such view of the matter, the interim direction sought for by the petitioners to direct respondents 6 and 7 to take the petitioners to duty with arrears of wages is not in consonance with the main relief or the consequential relief of the writ petition. If the writ petition is allowed, the petitioners will be treated as employees of respondents 4 and 5 and they would also get all consequential reliefs. Hence, the interim direction is liable to be vacated.

6. The appellant contended that the learned Judge, without considering the arguments advanced by the counsel and the contents of the affidavits filed by both parties, passed the impugned order causing much prejudice and irreparable harm to the workmen.

7. Respondents 4 and 5 in their counter mentioned that in the light of the authoritative pronouncement of this Court
in W.P.No.5128 of 2001 dated 19-04-2001 regarding the maintainability of the writ petition, the present writ petition is liable to be dismissed. Respondents 4 and 5,

while transferring their undertaking to respondent No.7, have taken pains to safeguard the services and interests of all the 191 employees by incorporating Clause 7 in the agreement dated 26-7-2002 between the respondents 4 and 7 in tune with section 25-FF of the Industrial Disputes Act, 1947 (for short the 'I.D. Act'). When the A.P. Union of Working Journalists approached the Commissioner of Labour, Hyderabad, regarding the transfer of Andhra prabha to respondent No.7, there was a detailed discussion between the parties before the Joint Commissioner of Labour and it was agreed to comply with Section 25-FF of the I.D. Act while transferring the services of the employees without any interruption in service on account of their transfer from one undertaking to another undertaking. In a writ petition covered by W.P.No.756 of 2003 filed by A.P. & I.E. Staff and Workers Union seeking a direction to the Commissioner of Labour to take appropriate steps on the representation of the Union to settle the issue of the service of 110 employees working in the Express Publications (Madurai) Limited, the Commissioner recorded the minutes on 06-01-2003 and on production of those minutes, this Court satisfied and held that the order passed by the Commissioner of Labour very much protected the interests of the employees. Accordingly, the writ petition was disposed of. The Contempt Case filed by the workman was also closed by observing that there are no reasons to entertain the contempt case. Individual letters were issued to all the workmen including the petitioner and the gratuity payable to the employees was also worked out and transferred to respondent No.7 with a specific understanding to credit the said amount to the accounts of the respective employees. The respondents also implemented the Manisana Sing Wage Board Award and fixed salaries of all the employees and paid arrears to them. Since all the employees were transferred to respondents 6 and 7 with all benefits, Section 25-FF of the I.D. Act will not come into picture. Hence, the writ petition is liable to be dismissed with costs.

8. Respondents 6 and 7 also filed a counter supporting the contentions raised by respondents 4 and 5 and further mentioned that the petitioners attended duties under respondents 6 and 7 till March, 2004 and failed to attend subsequently without obtaining any leave. Subsequently, the petitioners did not turn up to join duty and the respondents 6 and 7 have not refused to take them back to duty. Claiming wages without attending to duty itself is illegal, therefore, the question of invoking the provisions under Section 25-F and G of the I.D Act does not arise. Respondent No.7 followed Section

25-FF of the I.D. Act while taking all the workmen of the establishment of

respondents 4 and 5 and they stood up to the observations made by the High Court to protect the interests of the workmen. The petitioners are bound by the agreement entered by the employees coordination committee and they are not entitled for any further benefits than the benefits, which were already extended to them. These respondents also questioned the maintainability of the writ petition by contending that they do not come within the definition of Article 12 of the Constitution of India and requested to dismiss the writ petition.

9. The contentions raised by the respective parties indicate that there were agreements between all the parties to protect the interests of the petitioners and other workmen. The petitioners are contending that respondents 4 and 5 fraudulently transferred their undertaking to respondent No.7 sarruptiously without their knowledge. They are further contending that since respondent No.7 did not extend all the benefits required to be extended, the transfer of the petitioners and other employees is illegal and they are entitled to be treated as employees of respondents 4 and 5. Respondents 4 to 7 are contending that they complied with all the relevant provisions under the I.D. Act and as the employees voluntarily abstained from duty without obtaining any leave and continued to abstain, therefore, they are not entitled for any further benefits than the benefits, which were already extended to them.

10. In the light of the rival contentions of the parties, the truthfulness or otherwise of those contentions has to be sorted out only in the writ petition. It is not desirable to go into
those merits at interlocutory stage. If the contentions of the petitioners are accepted, they are entitled to all the reliefs and consequential benefits. If the contentions of the respondents are accepted, the writ petition is likely to be dismissed.

11. In the light of the above circumstances, it is not desirable to grant any interim direction as prayed for. Therefore, the learned single Judge rightly vacated the interim order dated
20-12-2004. We do not find any grounds to interfere with the same.

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C.A(Sr).No.4752 of 2005

12. This Contempt Appeal has been preferred against the order of a learned single Judge dated 24-12-2005 in Contempt Case No.41 of 2005. The Contempt

Case was filed by the appellant by contending that Sri Mootha Gopala Krishna representing the seventh respondent in the writ petition and his son Mootha Goutam committed willful disobedience of the order of this Court dated 20-12-2004 passed in W.P.M.P.No.26619 of 2004 in W.P.No.20331 of 2004, wherein this Court granted an interim direction on 20-12-2004 by observing that the respondents failed to file the counter even after two adjournments.

13. The learned counsel for the respondents relied on a catena of Judgments regarding the maintainability of the appeal against the order of the learned single Judge in the Contempt Case under the Contempt of Courts Act, 1971.

14. Before referring to the decisions, let us have a glance to Section 19 (1) of the Contempt of Courts Act, 1971 (for short the 'Act') which reads as follows:-

*"**19. Appeals**:- (1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt—*

a. *Where the order or decision is that of a Single Judge, to a Bench of not less than two Judges of the Court;*

b. *Where the order or decision is that of a Bench, to the Supreme Court:*

Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union Territory, such appeal shall lie to the Supreme Court.

(2) Pending any appeal, the appellate Court may order that—

a. *the execution of the punishment or order appealed against be suspended;*

b. *if the appellant is in confinement, he be released on bail; and*

c. *the appeal be heard notwithstanding that the appellant has not purged his contempt.*

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2).

(4) An appeal under sub-section (1) shall be filed—

a. *in the case of an appeal to a Bench of the High Court within thirty days;*

b. *in the case of an appeal to the Supreme Court, within sixty days,*

from the date of the order appealed against."

15. In **BARADALAMTA v. MISRA C.J., ORISSA** , the Supreme Court of India considered the scope of Section 19 of the Act and held that the order made by the Full Bench of Orissa High Court rejecting the motion made by the appellant and refusing to initiate a proceeding for contempt against the Chief Justice and other Judges was not appealable under Section 19 (1) of the Act. The Supreme Court further observed that in the light of the facts and circumstances of the said case, there was no necessity to express any opinion whether Section 19 (1) is confined only to a case where the High Court after initiating the proceedings for contempt against the contemnor and punishes him for contempt or it extends also to a case where after initiating a proceeding for contempt, the High Court finds that the alleged contemnor is not guilty of contempt and exonerates him or even if he is found guilty of contempt declines to punish him. The Court further observed that in England a right of appeal is given to a disappointed applicant under Section 13 (1) and (2) of the Administration of Justice Act, 1960. The Supreme Court also observed that though no appeal lies under Section 19 (1) of the Act as of right against an order or decision of the High Court rejecting a motion to initiate contempt proceedings, the Advocate General or any other person who was with the consent in writing of the Advocate General moved the High Court can always approach the Supreme Court by a petition for special leave to appeal and the power of the Supreme Court to interfere with such order or decision in exercise of its extraordinary jurisdiction under Article 136 is unfettered. The Supreme Court can always in suitable cases set right any order or decision of the High Court refusing to take action for contempt against the alleged contemnor, if the larger interests of administration of justice so requires and ultimately concluded that the preliminary objection raised by the respondent is well founded regarding the maintainability of the contempt appeal and the appellant is not entitled to maintain the appeal under Section 19 (1) of the Act.

16. In **OM PRAKASH JAISWAL v. D.K. MITTAL** , the Supreme Court held that filing of an application or petition for initiating proceedings for contempt or a mere receipt of such reference by the Court does not amount to initiation of the proceedings. The person filing an application or petition before the Court does not become a complainant or petitioner in the proceedings. He is just an informer or relater. His duty ends with the facts being brought to the notice of the Court. It is

thereafter for the court to act on such information or not to act. Though the private party or litigant moving the Court may at the discretion of the Court continue to render its assistance during the course of proceedings. An informant does not have a right of filing an appeal under Section 19 of the Act against an order refusing to initiate the contempt proceedings or disposing of the application or petition filed for initiating such proceedings and the complainant or petitioner cannot be called an aggrieved party.

17. In **STATE OF MAHARASHTRA v. MAHBOOB S. ALLIBHOY**, the respondents filed a writ petition before the High
Court claiming refund of certain amount paid as countervailing/additional duty. The Customs Department filed
an affidavit stating that the claim for refund was false being based on forged documents. The High Court, after taking into consideration the reply to show cause filed by the respondents, passed an order directing that a complaint be filed against them and that no action be taken under the Contempt of Courts Act. The latter part of the order of the High Court regarding dropping of the contempt proceeding was challenged by the State in appeal before the Supreme Court. The preliminary question was whether in the facts and circumstances of the case an appeal was maintainable against an order dropping the contempt proceeding. Dismissing the appeal, the Supreme Court held that:

> *"An appeal is a creature of a statute. Unless a statute provides for an appeal and specifies the order against which an appeal can be filed, no appeal can be filed or entertained as a matter of right or course. Section 19 of the Contempt of Courts Act provides that an appeal shall lie as of right from any order or decision of the High Court in exercise of its jurisdiction to punish for contempt. Thus if the High Court passes an order in exercise of its jurisdiction to punish any person for contempt of court, then only an appeal shall be maintainable under sub-section (1) of Section 19 of the Act. The words "any order" has to be read with the expression 'decision' used in the said sub-section which the High Court passes in exercise of its jurisdiction to punish for contempt. "Any order" is not independent of the expression 'decision'. They have been put in an alternative form saying 'order' or 'decision. In either case, it must be in the nature of punishment for contempt. So construed an appeal cannot lie under sub-section (1) of Section 19 against an interlocutory order passed in a proceeding for contempt by the High Court. Therefore, no appeal is maintainable against an order dropping proceeding for contempt or refusing to initiate a proceeding for contempt. This is apparent not only from sub-section (1) but also from sub-section (2) of Section 19."*

18. The Division Benches of this Court also dealt with Section 19 (1) of the Act and held that no appeal lies against a decision of a single Judge refusing to punish a person for contempt, whether the contempt is civil or criminal.

19. In **S.SAMMAIAH v. A.P.S.E.B.** , the A.P. High Court held as follows:

> *"The right of appeal is a creature of the statute and that Section 19 (1) provides a right of appeal as well as restricts right of appeal and any person who moves the machinery of the Court for contempt will be governed by the provisions of Section 19 (1) of "the Act" in respect of right of appeal. Any person who moves the machinery of the Court for contempt only brings to the notice of the Court the relevant facts which according to him or her constitute contempt of Court. After furnishing such information, the matter is left between the Court and the contemnor. It may be that the applicant may also assist the Court, but that doesn't mean that he is an aggrieved party and that weighed with the legislature in not conferring any right of appeal on the applicant who files an application for contempt against the order dismissing his application. For any contempt proceedings there are only two parties viz., the Court and the contemnor. This is one of the reasons for restricting the right of appeal by the Legislature."*

20. In **CH.VASUDEVA SHARMA v. EXECUTIVE OFFICER** , the A.P. High Court held as follows:

> *"Whatever the distinction might have been existing between civil and criminal contempt as to whether appeal lies under the letters patent or not, yet on introduction of the codified law in the shape of the 1971 Act and specific provision being made therein in Section 19 for appeal the distinction must be taken to have been wiped out. The Act was being enacted to define and limit the powers of certain Courts in punishing contempts of Courts and to regulate their procedure in relation thereto. With such objective in view, it could not be said that while the Act was making specific provisions for appeal, it would leave scope for provisions of appeal under other laws. Though the Act defines civil and criminal contempt separately, yet Section 19 does not make any distinction between the two kinds of contempt. In both kinds, the jurisdiction of the High Court is to punish for contempt. If the punishment is imposed, in whatever form, it is a matter of exercise of the jurisdiction and an appeal would lie assailing it. If the jurisdiction is not exercised, inasmuch as punishment is not imposed or cognizance is not taken, it is an absence of the exercise of jurisdiction because of which the provisions of Section 19 would not be applicable. The further argument that even if Section 19 is*

not applicable, yet an appeal would lie under Clause 15 of the letters patent, only because the contempt is alleged to be civil one, would in effect be going against the spirit and tenor of Section 19 and supplanting the provisions by additional provisions. It has hence to be held that decision in Taneja's case (1988 (3) SCJ 88) equally applies to civil as well as criminal contempt. In making the observation that the scope and ambit of the Judgment is confined to criminal contempt, their Lordships were only stressing the fact that the Judgment was not directed to decide questions about civil contempt. But since it is found that Section 19 does not make any distinction between civil and criminal contempt, it has to be held that the exposition made in the judgment is fully applicable to civil contempts also and appeal which is not otherwise maintainable, would not be appealable because of Clause 15 of the letters patent."

21. The above decisions rendered by the Supreme Court and Division Benches of this Court clarified that an appeal under Section 19 (1) of the Act does not lie against an order passed by the Court before initiation of the contempt proceedings or refusing to initiate the proceedings. They also clarify that even after registration of the proceedings, unless the High Court imposes the punishment in exercise of its jurisdiction to punish for contempt, no appeal would lie against such order. The High Court do not exercise its jurisdiction for contempt, unless the Court acts in a particular manner by imposing punishment for contempt.

22. The legal position regarding the maintainability of the appeal under Section 19 (1) of the Act is very clear and an appeal under Section 19 (1) cannot be maintained when the Court refuses to initiate contempt proceedings or refusing to punish the contemnor for contempt under the Act. We further clarify that an appeal under Section 19 (1) of the Act could be maintained only by the contemnor being aggrieved by the punishment imposed on him for contempt of Court under the Act. It is further clarified that the complainant or the petitioner cannot be described as an aggrieved party, therefore, he is not entitled to maintain an appeal under Section 19 (1) of the Act against an order refusing to initiate contempt proceedings or disposing of the application or petition filed for initiation of such proceedings.

23. The appellant further contended that on 22-12-2004 the appellant and all employees went to the office of the sixth respondent to report to duty along with a copy of the interim order, but the sixth respondent refused to meet and to take them to duty. Thereafter, they sent the joining report on

23-12-2004 to the Chairman and Managing Director of Vasavi Communications, Hyderabad and it was duly received by him through an acknowledgement. Two weeks thereafter, the appellant and other employees issued a notice to the Chairman and Managing Director of Vasavi Communications to the head office at Kakinada and Branch office at Hyderabad. The said notice was received by the concerned person at Hyderabd, but it was refused and returned by the head office at Kakinada. Therefore, it is an indication that the respondents want to evade the process of law. Hence, they are liable to be punished under the Contempt of Courts Act.

24. On behalf of the Andhra Prabha management of Vasavi Communications, Sri Mootha Gopalakrishna filed a detailed counter affidavit contending that none of the Directors of Vasavi Communications received any joining reports from the employees and they are not interested in joining the organization. They voluntarily absented from duties since long time, therefore, the question of their joining duty do not arise. It was further contended that Sri Mootha Gopalakrishna is not the Chairman and Managing Director of Vasavi Communications, since he resigned from the said post on 29-03-2004 which was accepted by the Registrar of Companies.

25. After considering the above contentions, the learned single Judge observed that Sri Mootha Gopalakrishna took a specific stand that he resigned from the post of Chairman and Managing Director on 29-03-2004 which was accepted by the Registrar of Companies on 21-04-2004, but the interim order was passed on 20-12-2004 which was much later to the resignation of the first respondent. The learned Judge further observed that the petitioners could not deny the contention of the first respondent that he resigned from the post of Chairman and Managing Director, therefore, the question of willful disobedience of the order dated 20-12-2004 by the said person does not arise. The learned Judge, while considering the case of the son of Mootha Gopalakrishna, who was arrayed as the second respondent in the contempt case, mentioned that there was no material placed by the employees to show that they gave joining report to the said person. They did not place any material to show that the second respondent received the letter addressed to the Chairman and Managing Director, therefore it cannot be said that there is willful disobedience of orders of this court by the second respondent also. The learned Judge on the date of passing the impugned order, also vacated the interim order

granted in W.P.M.P.No.26619 of 2004 dated 20-12-2004. After considering the interim order passed by the learned single Judge, we found that there are no grounds to interfere with the order passed by the learned single Judge vacating the above interim order.

26. In the light of the above circumstances and in the light of the vacation of the interim order, we do not find any grounds to interfere with the order of dismissal of the Contempt Case passed by the learned single Judge.

27. In the light of the above findings regarding the maintainability and in the present set of circumstances and nature of the order passed by the learned single Judge, we have no hesitation to hold that the petitioner is not entitled to maintain an appeal under Section 19 (1) of the Act.

28. In the result, W.A.No.1698 of 2005 is dismissed as devoid of merit directing each party to bear its own costs.

C.A(sr).No.4752 of 2005 is dismissed as not maintainable under Section 19 (1) of the Act and also on merits. No order as to costs.

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B.PRAKASH RAO, J

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Dr.G.YETHIRAJULU, J

Date: -12-2005.

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